

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6884
BILL NUMBER: HB 1113

NOTE PREPARED: Apr 12, 2005
BILL AMENDED: Apr 11, 2005

SUBJECT: Court Fees.

FIRST AUTHOR: Rep. Richardson
FIRST SPONSOR: Sen. Lawson C.

BILL STATUS: As Passed Senate

**FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It creates the DNA sample processing fund to fund the collection, shipment, analysis and preservation of DNA samples.
- B. It adds a judicial salaries fee, court administration fee, DNA sample processing fee, and service fee to the fees collected in certain judicial proceedings. It provides for 75% of the judicial salaries fee collected by city, town, and Marion County small claims courts to be retained by the jurisdiction in which the court operates. It provides for the remainder of the fees to be distributed to the state.
- C. It changes the name of the Judicial Administration Fee to the Public Defense Administration Fee and increases the fee.
- D. It increases the deferred moving traffic violation fee (infractions), and deferred prosecution fee (misdemeanors).
- E. It increases the small claims service fee and creates a new service fee for civil and other noncriminal filings. It provides for 100% of the service fees to be retained by the jurisdiction in which the court operates.
- F. It allocates revenue equal to the estimated amount to be collected from the increase in the: (1) DNA sample processing fee to the DNA sample processing fund; and (2) public defense administration fee to the public defense fund.
- G. It allocates part of the revenue raised from judicial salaries fee to the Judges' Retirement Fund.
- H. It limits the uses to which funds derived from a pretrial deferral or pretrial diversion program may be put, and requires these funds to be expended in accordance with guidelines adopted by the prosecuting attorneys council. It prohibits persons arrested or charged with operating while intoxicated or an offense involving intoxication or the operation of a motor vehicle that arose from the same episode of criminal conduct as the operating while intoxicated offense from participating in a pretrial diversion or deferral program, and prohibits deferral for certain offenses in connection with the operation of a commercial motor vehicle.
- I. It exempts certain protective order filing from foreign jurisdictions.

Effective Date: June 1, 2005; July 1, 2005.

Explanation of State Expenditures: *Summary:* The bill will result in transfers from the state General Fund for additional funding of \$3.44 M annually for the Judges Retirement Fund, the Public Defense Fund, and the new DNA Sampling Fund. There will also be nominal increases for seven other court- and criminal justice-related programs.

Change in Semi-Annual Transfers from State General Fund to Court and Criminal Justice Related Funds			
Fund	Current Funding	New Funding	Funding Change
Public Defense Fund	\$2,200,000	\$2,700,000	\$500,000
Judicial Retirement Fund	\$1,690,143	\$2,580,348	\$890,204
DNA Sample Processing Fund		\$334,739	\$334,739
Seven Other Programs	\$5,014,114	\$5,017,122	\$3,008
	\$8,904,257	\$10,632,209	\$1,727,952

The increase in the Public Defense Fund is financed by the increased Public Defense Fee (see *Explanation of State Expenditures*).

The increases for the Judicial Retirement Fund and the DNA Sample Processing Fund will occur as part of an additional transfer of \$1,227,952 annually from the state General Fund to a series of court-related programs and a new DNA Sample Processing Fund. Currently, twice a year, \$6,704,257 is transferred from the state General Fund and deposited into a series of court- and criminal justice-related programs. As proposed, \$7,932,209 would be transferred instead. The added money transferred will be used for two basic purposes:

- To increase the payments that would be made to the Judges Retirement Fund by \$1.78 M annually. The added costs will be financed by the new Judicial Salaries Fee (see *Explanation of State Revenues*).
- To establish a new fund for analyzing more DNA samples from offenders who are incarcerated in the Department of Correction. The added transfer is funded from a DNA processing fee. The table below shows the changes in the transferred amounts. The revenue deposited in the DNA Sample Processing Fund would be the amount available for funding the DNA processing by the Indiana State Police.
- To provide nominal increases in funding for seven other court- and criminal justice-related programs.

Semi-Annual Revenue Transfer Under IC 33-37-7-9					
	Current Law		Proposed Change		Added Revenue
Fund Type	Pct.	Amount Rec'd	Pct.	Amount Rec'd	
Family Violence & Victim Assistance	11.08%	\$742,832	9.37%	\$743,248	\$416
IN Judges' Retirement Fund	25.21%	\$1,690,143	32.53%	\$2,580,348	\$890,204
Law Enforcement Academy Building	3.52%	\$235,990	2.98%	\$236,380	\$390
Law Enforcement Training	14.19%	\$951,334	12.00%	\$951,865	\$531
Violent Crime Victims Compensation	16.50%	\$1,106,202	13.95%	\$1,106,543	\$341
Motor Vehicle Highway Account	26.95%	\$1,806,797	22.78%	\$1,806,957	\$160
Fish and Wildlife	0.32%	\$21,454	0.28%	\$22,210	\$757
IN Jud. Center Drug & Alc Programs	2.23%	\$149,505	1.89%	\$149,919	\$414
DNA Sample Processing			4.22%	\$334,739	\$334,739
Total	100.00%	\$6,704,257	100.00%	\$7,932,209	\$1,227,952

Explanation of State Revenues: Added revenue to the state General Fund of \$20.31 M would come from six sources: a new \$1 DNA processing fee; the Judicial Administration Fee, which will be renamed the Public Defense Administration Fee and increased from \$2 to \$3; a new Judicial Salaries Fee that will be either be \$10 or \$15; a new \$2 Court Administration Fee; and increases in the Deferred Prosecution Fee and the Deferred Traffic Offense Prosecution Fee.

Summary of New Revenue Generated				
<u>Fee</u>	<u>Charged to Persons Who Are:</u>	<u>Cur- rent Fee</u>	<u>New Fee</u>	<u>General Fund Revenue (in \$M)</u>
DNA sample processing fee [NEW]	Convicted of felony or misdemeanor, found to have committed infraction or ordinance violation or required to pay a pretrial diversion fee	None	\$1.00	\$0.70
Rename Judicial Administration Fee the Public Defense Administration Fee	Convicted of felony or misdemeanor, found to have committed infraction or ordinance violation, required to pay pretrial diversion fee, or filing any type of civil, probate, or small claims case	\$2.00	\$3.00	\$1.07
Judicial Salaries Fee [NEW]	Convicted of felony or misdemeanor, found to have committed infraction or ordinance violation, required to pay pretrial diversion fee, or filing any type of civil, probate, or small claims case	none	\$10 small claims, \$15 all others	\$14.20

Summary of New Revenue Generated				
<u>Fee</u>	<u>Charged to Persons Who Are:</u>	<u>Cur- rent Fee</u>	<u>New Fee</u>	<u>General Fund Revenue (in \$M)</u>
Court Administration Fee [NEW]	Convicted of felony or misdemeanor, found to have committed infraction or ordinance violation, required to pay pretrial diversion fee, or filing any type of civil, probate, or small claims case	none	\$2.00	\$2.00
Increase Deferred Prosecution Fee	Accused of committing a misdemeanor and agree to participated in diversion program	\$50	\$120	\$0.64
Increase Deferred Traffic Offense Prosecution Fee	Accused of committing an infraction or violating a municipal ordinance and agree to participated in deferral program	\$25	\$70	\$1.70
Estimated New Revenue				<u>\$20.31</u>

DNA Sample Processing Fee -- A DNA Processing Fee of \$1 would be imposed on all felonies, misdemeanors, infractions, ordinance violations, and persons required to pay a pretrial diversion fee. These fees are estimated to generate almost \$690,000 per year. Proceeds from this fee would be deposited into the state General Fund.

Estimated Revenues Generated From a \$1 DNA Sample Fee			
	<u>Trial Courts</u>	<u>City and Town Courts</u>	<u>Total</u>
Felonies and Misdemeanors	\$47,458	\$21,797	\$69,255
Paying Pretrial Diversion Fee	\$12,889	\$3,291	\$16,180
Infractions	\$390,275	\$133,489	\$523,764
Ordinance Violations	\$53,250	\$12,866	\$66,116
Juvenile Cases	<u>\$14,273</u>	<u>\$0</u>	<u>\$14,273</u>
Totals	<u>\$518,145</u>	<u>\$171,443</u>	<u>\$689,588</u>

Changing the Judicial Administration Fee to the Public Defense Administration Fee – The Judicial Administration Fee is charged in all cases involving civil, criminal, noncivil, and small claims cases. This fee would be renamed the Public Defense Fee and increased from \$2 to \$3. This one dollar increase is estimated to increase revenue generated by this fee by \$1.07 M each year.

Judicial Salaries Fee – For civil filings, juvenile cases, felony convictions, misdemeanor convictions, infractions, and ordinance violation actions in trial courts and city and town courts, \$15 would be collected. For small claims cases in the state's trial courts, city and town courts, and Marion County Small Claims Courts, a fee of \$10 would be assessed at filing.

The percentage of revenue collected from this fee that would be deposited into the state General Fund depends on the court from which the fee is assessed. The following table shows how these fees are divided.

	Percent Retained By	
	<u>State General Fund</u>	<u>Courts</u>
Trial Courts	100%	0%
City and Town Courts	75%	25%
Marion County Small Claims	75%	25%

This fee is expected to generate approximately \$14.2 M each year for the state General Fund. Revenues retained by city and town courts and the Marion County Township Small Claims Courts are described in the *Explanation of Local Revenues* section.

Estimated New Revenue Generated by Judicial Salaries Fee and Estimated Revenue By Case Category Deposited into the State General Fund and the State User Fee Fund				
	State General Fund			Total Revenue
	<u>Courts of Record</u>	<u>City and Town Courts</u>	<u>Marion County Small Claims Court</u>	
Felonies and Misdemeanors	\$711,873	\$245,216		\$957,089
Infractions	\$5,854,130	\$1,501,748		\$7,355,878
Ordinance Violations	\$798,744	\$144,742		\$943,486
Juvenile	\$214,088			\$214,088
Civil Plenary and Tort	\$1,293,293	\$126,491		\$1,419,784
Small Claims	\$1,734,497		\$632,418	\$2,366,915
Domestic Relations	\$504,380			\$504,380
Probate and Others	<u>\$478,883</u>	<u>\$170</u>		<u>\$479,053</u>
Totals	<u>\$11,589,888</u>	<u>\$2,018,367</u>	<u>\$632,418</u>	<u>\$14,240,673</u>

In future years, fees would be increased by \$1 whenever salaries of judicial officers are increased.

Changes in the Deferred Prosecution Fee and the Deferred Traffic Offense Prosecution Fee – Indiana law allows prosecuting attorneys to establish programs in their counties in which prosecution in cases involving misdemeanors, infractions, and ordinance violations may be avoided if the defendant pays an initial and monthly fee deposited in a local fund and another fee that is split between the state and local general funds.

In misdemeanor cases, defendants can agree to enter into a diversion program under IC 33-39-1-8. Participants in the program pay an initial fee, a monthly fee, and a Deferred Prosecution Fee. The initial and monthly fees are deposited in a pretrial diversion program fund. A prosecutorial diversion fee of \$50 is also charged and split between state and local funds.

In infractions and ordinance violations cases, the prosecuting attorney of a county or an attorney representing a municipal corporation may establish a deferral program for infractions and ordinance violations. Defendants

in deferral programs pay an initial fee and monthly fee to the local program, and a \$25 deferral fee is assessed on all actions involving a moving traffic offense. Like the prosecutorial diversion fee, the deferral fee is split between the state and the local general funds.

This bill would have two effects on revenue generated by these court fees involved in misdemeanor deferral cases.

- It would reduce the revenues that the courts would receive by prohibiting persons charged with misdemeanor OWI offenses from participating in these programs.
- It would increase the court fees the person participating in a deferral or diversion program would pay to the sentencing court.

Prohibiting persons arrested for OWI from being diverted would reduce the potential number of cases by roughly 15%. The Bureau of Motor Vehicles reports the number of OWI cases involving misdemeanor OWIs that were deferred by calendar year between CY 2000 and 2004.

Estimated OWI Cases Deferred by Calendar Year				
<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
182	135	225	707	2,469

Assuming 2,500 OWIs currently being deferred statewide through the misdemeanor diversion programs, the reduction in the number of misdemeanors eligible for these programs is shown in the following table. The misdemeanors reported to be diverted are published in the *Indiana Judicial Report*.

<u>Court</u>	<u>Misdemeanors Reported to be Diverted*</u>		<u>OWI Misdemeanors**</u>		<u>Misdemeanors Eligible for Diversion Program</u>	<u>Percent Reduction</u>
Trial Courts	12,889	-	2,000	=	10,889	84%
City and Town Courts	3,291	-	500	=	2,791	85%
* Source: <i>Indiana Judicial Report</i> ** Source: Bureau of Motor Vehicles						

As proposed, the fees paid by participants in these programs would be increased from the current fees to the new fees shown below.

Fees Paid for Pretrial Diversion Programs for Misdemeanors and Deferral Programs for Infractions and Ordinance Violations			
	<u>Current</u>	<u>New</u>	<u>Added</u>
Pretrial Diversion Program Fees for Misdemeanors	\$50	\$120	\$70
Deferral Program Fees for Infractions and Ordinance Violations	\$25	\$70	\$45

The revenue from these fees would be split between the state and counties and cities and towns in the same manner as other court cost fees as shown in the following table.

	State General Fund	Counties	Cities and Towns
Trial Courts	70%	27%	3%
City and Town Courts	55%	20%	25%

The new revenue generated by the added fees is shown below.

Potential Revenue Generated by Proposed Court Fee Increase							
	Case Type	Avg. Dispositions CY 2002, 2003	Added Fee	Added Revenue*	Shares		
					State	County	City & Towns
Trial Courts	Misdemeanors	10,889	\$70	\$762,230	\$533,561	\$205,802	\$22,867
	Infractions & Ord. Violations	39,306	\$45	\$1,768,770	\$1,238,139	\$477,568	\$53,063
City and Town Courts	Misdemeanors	2,791	\$70	\$195,370	\$107,454	\$39,074	\$48,843
	Infractions & Ord. Violations	18,570	\$45	\$835,650	\$459,608	\$167,130	\$208,913
ADDED REVENUE:				<u>\$3,562,020</u>	<u>\$2,338,762</u>	<u>\$889,574</u>	<u>\$333,686</u>
* at 100% payment rate							

Explanation of Local Expenditures:

Explanation of Local Revenues: Changes in revenues for local units of government would result from the new Judicial Salaries Fee, increasing the Deferred Prosecution Fee and the Deferred Traffic Offense Prosecution Fees, increasing the small claims service fee, and creating a new service fee for civil filings.

The following table shows the changes in funding for counties, cities and towns, and the Marion County Township Small Claims Courts.

Provision	Counties	City and Towns	Marion County Township Small Claims Courts
Judicial Salaries Fee		\$672,789	\$158,104
Deferred Prosecution Fee	\$244,876	\$71,710	
Deferred Traffic Offense Prosecution Fee	\$644,698	\$261,976	
Service Fee in Civil Actions (mid-range est.)	\$2,790,750	\$199,530	
Service Fee in Small Claims Actions (mid-range est.)*	<u>\$3,860,610</u>	<u>\$10,290</u>	
Total Changes	<u>\$7,540,934</u>	<u>\$1,216,295</u>	<u>\$158,104</u>
* each year after CY 2006			

Judicial Salaries Fees -- As proposed, city and town courts and the Marion County Township Small Claims Courts would be permitted to retain 25% of the revenue collected from the Judicial Salary Fee. Cities and towns with city and town courts would retain an estimated **\$672,000**, while Marion County Township Small Claims Courts would be permitted to retain an estimated **\$158,000**.

Added Revenue from Deferred Prosecution Fee and the Deferred Traffic Offense Prosecution Fee -- Local units of government retain 30% of the court fees generated in trial courts and 45% of the court fees generated in city and town courts when misdemeanors, infractions, and ordinance violations are deferred by the prosecuting attorney. The added revenues are also described under *Explanation of State Revenues*.

User Fees from Misdemeanor Diversion Programs and Infractions Deferral Programs— User fee revenues may be reduced for misdemeanor diversion programs if OWI misdemeanors are no longer eligible for the diversion programs. The revenue loss is not able to be determined and will depend on whether the prosecuting attorney currently allows for these types of cases to be diverted.

Small Claims Service Fees and Service Fees in Civil Cases - New fees would be assessed when persons file civil cases in either trial courts or city and town courts and increased from the current \$5 to \$10 in small claims cases. New revenue will depend on the number of defendants ultimately named in the cases. Since no information is available in published form that shows the number of defendants per case, the number of defendants is assumed to be either one or two in the following analysis.

Proposed Changes -- The following table illustrates how current law specifies how service fees for small claims cases are paid and the proposed changes for both small claims and civil actions.

	Fees		Parties Affected	
	<u>Current</u>	<u>Proposed</u>	<u>Current</u>	<u>Proposed</u>
Small Claims	\$5*	\$10	Plaintiff pays fee for each defendant named or added	Plaintiff pays fee for each defendant named; party adding defendants pays fee for each defendant named
Civil Actions	none	\$10	None	Plaintiff pays fee for each defendant named; party adding defendants pays fee for each defendant named
*Fee becomes effective on July 1, 2005				

Background Information -- The following table is the basis for estimating the additional revenue that this bill could generate for both trial courts and city and town courts.

	Cases	1999	2000	2001	2002	2003	Five-Year Average
Trial Courts	Civil	163,776	175,596	189,445	198,460	202,972	186,050
	Small Claims	272,545	272,437	299,033	217,582	225,275	257,374
City & Town Courts	Civil	9,820	12,210	12,308	19,522	12,650	13,302
	Small Claims	0	1	0	158	686	686

Since the average number of defendants named in civil and small claims cases is not reported in published form, the following tables assume either one or two defendants are involved in each case. Based on the five-year average of filings, the estimated revenue for the last six months of CY 2005 could range between \$1.58 M and

\$3.15 M. For CY 2006 and each following year, the added \$5 fees for small claims and \$10 for civil actions could generate between \$3.15 M and \$6.29 M.

		5 Yr. Avg. Of Filings		Added Fee		For One Respondent	For Two Respondents	Mid-range
Trial Courts	Civil	186,050	x	\$10	=	\$1,860,500	\$3,721,000	\$2,790,750
	Small Claims*	257,374	x	\$5	=	\$1,286,870	\$2,573,740	\$1,930,305
	Small Claims**	257,374	x	\$10	=	\$2,573,740	\$5,147,480	\$3,860,610
City & Town Courts	Civil	13,302	x	\$10	=	\$133,020	\$266,040	\$199,530
	Small Claims*	686	x	\$5	=	\$3,430	\$6,860	\$5,145
	Small Claims**	686	x	\$10	=	\$6,860	\$13,720	\$10,290
* for CY 2005 ** for years after CY 2005								

The proceeds from these service fees are deposited in the local general funds.

State Agencies Affected: Prosecuting Attorneys Council.

Local Agencies Affected: All courts of record with civil and small claims jurisdiction.

Information Sources: *Indiana Judicial Service Reports 1999 -- 2003.*

Fiscal Analyst: Mark Goodpaster, 317-232-9852.